saying he was glad it was no worse, this was held to be no revocation.[1]

§ 274. Documentary evidence is also required, in proof of the *contract of apprenticeship;* there being no legal binding, to give the master coercive power over the person of the apprentice, unless it be by indentures, duly executed in the forms prescribed by the various statutes on this subject. The general features of the English statutes of apprenticeship, so far as the mode of binding is concerned, will be found in those of most of the United States. There are various other cases, in which a deed, or other documentary evidence is reqnired by statutes, a particular enumeration of which would be foreign from the plan of this treatise.[2]

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[1] Doe *v.* Perkes, 3 B. & Ald. 489.

[2] In several of the United States, two subscribing witnesses are necessary to the execution of a deed of conveyance of lands, to entitle it to registration; in others, but one. In some others, the testimony of two witnesses is requisite, when the deed is to be proved by witnesses. 4 Kent, Comm. 457. See Post, Vol. 2, tit. WILLS, *passim*, where the subject of Wills is more amply treated.

CHAPTER XV.

OF THE ADMISSIBILITY OF PAROL OR VERBAL EVIDENCE TO AFFECT THAT WHICH IS WRITTEN.[1]

§ 275. BY *written evidence*, in this place, is meant not every thing which is in writing, but that only which is of a documentary and more solemn nature, containing the terms of a contract between the parties, and designed to be the repository and evidence of their final intentions. *Fiunt enim de his* [*contractibus*] *scripturæ, ut, quod actum est, per eas facilius probari poterit.*[2] When parties have deliberately put their engagements into writing, in such terms as import a legal obligation, without any uncertainty as to the object or extent of such engagement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking, was reduced to writing; and all oral testimony of a previous *colloquium* between the parties, or of conversation or declarations at the time when it was completed or afterwards, as it would tend, in many instances, to substitute a new and different contract for the one which was really agreed upon, to the prejudice, possibly, of one of the parties, is rejected.[3] In other words, as the rule is now

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[1] The subject of this chapter is ably discussed in Spence on the Equitable Jurisdiction of Chancery, Vol. 1, p. 553–575, and in 1 Smith's Leading Cases, p. 410–418, [305]–[310,] with Hare & Wallace's notes.

[2] Dig. Lib. 20, tit. 1, l. 4; Ib. Lib. 22, tit. 4, l. 4.

[3] Stackpole *v.* Arnold, 11 Mass. 30, 31, per Parker, J.; Preston *v.* Merceau, 2 W. Bl. 1249; Coker *v.* Guy, 2 B. & P. 565, 569; Bogert *v.* Cauman, Anthon's R. 70; Bayard *v.* Malcolm, 1 Johns. 467, per Kent, C. J.; Rich *v.* Jackson, 4 Bro. Ch. R. 519, per Ld. Thurlow; Sinclair *v.* Stevenson, 1 C. & P. 582, per Best, C. J.; McLellan *v.* The Cumberland Bank, 11 Shepl. 566. The general rule of the Scotch law is to the same effect, namely, that "writing cannot be cut down, or taken away by the testimony of witnesses." Tait on Evid. p. 326, 327.

more briefly expressed, "parol contemporaneous evidence is inadmissible to contradict or vary the terms of a valid written instrument." [1]

§ 276. This rule "was introduced in early times, when the most frequent mode of ascertaining a party to a contract was by his seal affixed to the instrument; and it has been continued in force, since the vast multiplication of written contracts, in consequence of the increased business and commerce of the world. It is not because a seal is put to the contract, that it shall not be explained away, varied, or rendered ineffectual; but because the contract itself is plainly and intelligibly stated, in the language of the parties, and is the best possible evidence of the intent and meaning of those who are bound by the contract, and of those who are to receive the benefit of it." "The rule of excluding oral testimony has heretofore been applied generally, if not universally, to simple contracts in writing, to the same extent and with the same exceptions as to specialties or contracts under seal." [2]

§ 277. It is to be observed, that the rule is directed only against the admission of any other evidence of the *language*, employed by the parties in making the contract, than that which is furnished by the writing itself. The writing, it is true, may be read by the light of surrounding circumstances, in order more perfectly to understand the intent and meaning of the parties; but, as they have constituted the writing to be the only outward and visible expression of their meaning, *no other words* are to be added to it, nor substituted in its stead. The duty of the Court in such cases is to ascertain,

[1] 1 Phil. & Am. on Evid. p. 753; 2 Phil. Evid. 350; 2 Stark. Evid. 544, 548; Adams *v.* Wordley, 1 M. & W. 379, 380, per Parke, B.; Boorman *v.* Johnston, 12 Wend. 573.

[2] Per Parker, J. in Stackpole *v.* Arnold, 11 Mass 31. See also Woolam *v.* Hearn, 7 Ves. 218, per Sir Wm. Grant; Hunt *v.* Adams, 7 Mass. 522, per Sewall, J.

not what the parties may have secretly intended, as contra-distinguished from what their words express; but what is the meaning of the words they have used.[1] It is merely a duty of interpretation; that is, to find out the true sense of the written words, as the parties used them; and of construction, that is, when the true sense is ascertained, to subject the instrument, in its operation, to the established rules of law.[2] And where the language of an instrument has a settled legal construction, parol evidence is not admissible to contradict that construction. Thus, where no time is expressly limited for the payment of the money mentioned in a special contract in writing, the legal construction is, that it is payable presently; and parol evidence of a contemporaneous verbal agreement for the payment at a future day is not admissible.[3]

§ 278. The *terms* of every written instrument are to be *understood in their plain, ordinary, and popular sense*, unless they have generally, in respect to the subject-matter, as, by the known usage of trade or the like, acquired a peculiar sense, distinct from the popular sense of the same words; or unless the context evidently points out that, in the particular instance, and in order to effectuate the immediate intention of the parties, they must be understood in some other and

[1] Doe *v.* Gwillim, 5 B. & Ad. 122, 129, per Parke, J.; Doe *v.* Martin, 4 B. & Ad. 771, 786, per Parke, J.; Beaumont *v.* Field, 2 Chitty's R. 275, per Abbott, C. J. See Post, § 295.

[2] The subject of Interpretation and Construction is ably treated by Professor Lieber, in his Legal and Political Hermeneutics, ch. 1, § 8, and ch. 3, § 2, 3; Doct. & St. 39, c. 24. The interpretation, as well as the construction of a written instrument, is for the Court, and not for the Jury. But other questions of intent, in fact, are for the Jury. The Court, however, where the meaning is doubtful, will, in proper cases, receive evidence, in aid of its judgment; Story on Agency, § 63, note (1); Paley on Agency, by Lloyd, p. 198, n.; Ante, § 49; Hutchinson *v.* Bowker, 5 M. & W. 535; and where it is doubtful whether a certain word was used in a sense different from its ordinary acceptation, it will refer the question to the Jury. Simpson *v.* Margitson, 35 Leg. Obs. 172.

[3] Warren *v.* Wheeler, 8 Metc. 97.

peculiar sense. But where the instrument consists partly of a printed formula, and partly of written words, if there is any reasonable doubt of the meaning of the whole, the *written words* are entitled to have *greater effect* in the interpretation, than those which are printed; they being the immediate language and terms, selected by the parties themselves for the expression of their meaning, while the *printed formula*, is more general in its nature, applying equally to their case, and to that of all other contracting parties on similar subjects and occasions.[1]

§ 279. The rule under consideration is *applied only in suits between the parties* to the instrument; as they alone are to blame if the writing contains what was not intended, or omits that which it should have contained. It cannot affect third persons; who, if it were otherwise, might be prejudiced by things recited in the writings, contrary to the truth, through the ignorance, carelessness, or fraud of the parties; and who, therefore, ought not to be precluded from proving the truth, however contradictory to the written statements of others.[2]

§ 280. It is almost superfluous to add, that the rule does not exclude the *testimony of experts*, to aid the Court in reading the instrument. If the characters are difficult to be deciphered, or the language, whether technical, or local and provincial, or altogether foreign, is not understood by the Court, the evidence of persons skilled in deciphering writings, or who understood the language in which the instrument is

[1] Per Ld. Ellenborough, in Robertson *v.* French, 4 East, 135, 136. See Wigram on the Interpretation of Wills, p. 15, 16, and cases there cited. See also Boorman *v.* Johnston, 12 Wend. 573; Taylor *v.* Briggs, 2 C. & P. 525; Alsager *v.* St. Katherine's Dock Co., 14 M. & W. 799, per Parke, B.

[2] Ante, § 23, 171, 204; 1 Poth. Obl. by Evans, P. 4, c. 2, art. 3, n. [766]; 2 Stark. Ev. 575; Krider *v.* Lafferty, 1 Whart. 303, 314, per Kennedy, J.; Reynolds *v.* Magness, 2 Iredell, R. 26.

written, or the technical or local meaning of the terms employed, is admissible, to declare what are the characters, or to translate the instrument, or to testify to the proper meaning of the particular words.[1] Thus, the words "inhabitant,"[2] — "level,"[3] — "thousand,"[4] — "fur,"[5] — "freight,"[6] — and many others, have been interpreted; and their peculiar meaning, when used in connexion with the subject-matter of the transaction, has been fixed, by parol evidence of the sense, in

[1] Wigram on the Interpretation of Wills, p. 48; 2 Stark. Ev. 565, 566; Birch *v.* Depeyster, 1 Stark. R. 210, and cases there cited; Post, § 292; Sheldon *v.* Benham, 4 Hill, N. Y. Rep. 123.

[2] The King *v.* Mashiter, 6 Ad. & El. 153.

[3] Clayton *v.* Gregson, 5 Ad. & El. 302; 4 N. & M. 602, S. C.

[4] Smith *v.* Wilson, 3 B. & Ad. 728. The doctrine of the text was more fully expounded by Shaw, C. J. in Brown *v.* Brown, 8 Metc. 576, 577, as follows: — "The meaning of words and the grammatical construction of the English language, so far as they are established by the rules and usages of the language, are *primâ facie*, matter of law, to be construed and passed upon by the Court. But language may be ambiguous and used in different senses; or general words, in particular trades and branches of business — as among merchants, for instance — may be used in a new, peculiar or technical sense; and therefore, in a few instances, evidence may be received, from those who are conversant with such branches of business, and such technical or peculiar use of language, to explain and illustrate it. One of the strongest of these, perhaps, among the recent cases, is the case of Smith *v.* Wilson, 3 Barn. & Adolph. 728, where it was held, that in an action on a lease of an estate including a rabbit warren, evidence of usage was admissible, to show that the words 'thousand of rabbits' were understood to mean one hundred dozen, that is, twelve hundred. But the decision was placed on the ground that the words 'hundred,' 'thousand,' and the like, were not understood, when applied to particular subjects, to mean that number of units; that the definition was not fixed by law, and therefore was open to such proof of usage. Though it is exceedingly difficult to draw the precise line of distinction, yet it is manifest that such evidence can be admitted only in a few cases like the above. Were it otherwise, written instruments, instead of importing certainty and verity, as being the sole repository of the will, intent, and purposes, of the parties, to be construed by the rules of law, might be made to speak a very different language, by the aid of parol evidence."

[5] Astor *v.* The Union Ins. Co. 7 Cowen, 202.

[6] Peisch *v.* Dickson, 1 Mason, 11, 12.

which they are usually received, when employed in cases similar to the case at bar. And so of the meaning of the phrase "duly honored,"[1] when applied to a bill of exchange; and of the expression, "in the month of October,"[2] when applied to the time when a vessel was to sail; and many others of the like kind. If the question arises from the obscurity of the writing itself, it is determined by the Court alone;[3] but questions of custom, usage, and actual intention and meaning derived therefrom, are for the Jury.[4] But where the words have a known legal meaning, such, for example, as measures of quantity fixed by statute, parol evidence, that the parties intended to use them in a sense different from the legal meaning, though it were still the customary and popular sense, is not admissible.[5]

§ 281. The reason and policy of the rule will be further seen by adverting to some of the cases, in which parol evidence has been *rejected*. Thus, where a policy of insurance was effected on goods, "in ship or ships from Surinam to

[1] Lucas *v.* Groning, 7 Taunt. 164.

[2] Chaurand *v.* Angerstein, Peake's Cas. 43. See also Peisch *v.* Dickson, 1 Mason, 12; Doe *v.* Benson, 4 B. & Ald. 588; United States *v.* Breed, 1 Sumn. 159; Taylor *v.* Briggs, 2 C. & P. 525.

[3] Remon *v.* Hayward, 2 Ad. & El. 666; Crofts *v.* Marshall, 7 C. & P. 597. But see Sheldon *v.* Benham, 4 Hill, N. Y. Rep. 123.

[4] Lucas *v.* Groning, 7 Taunt. 164, 167, 168; Birch *v.* Depeyster, 1 Stark. R. 210; Paley on Agency, (by Lloyd) p. 198; Hutchinson *v.* Bowker, 5 M. & W. 535.

[5] Smith *v.* Wilson, 3 B. & Ad. 728, per Ld. Tenterden; Hockin *v.* Cooke, 4 T. R. 314; Att. Gen. *v.* The Cast Plate Glass Co. 1 Anstr. 39; Sleght *v.* Rhinelander, 1 Johns. 192; Frith *v.* Barker, 2 Johns. 335; Stoever *v.* Whitman, 6 Binn. 417; Henry *v.* Risk, 1 Dall. 465; Doe *v.* Lea, 11 East, 312. Conversations between the parties, at the time of making a contract, are competent evidence, as part of the *res gestæ*, to show the sense which they attached to a particular term used in the contract. Gray *v.* Harper, 1 Story, R. 574. Where a sold note ran thus, — "18 pockets of hops at 100*s*." parol evidence was held admissible to show that 100*s*. meant the price per hundred weight. Spicer *v.* Cooper, 1 G. & D. 52.

London," parol evidence was held inadmissible to show that a particular ship in the fleet, which was lost, was verbally excepted at the time of the contract.[1] So, where a policy described the two *termini* of the voyage, parol evidence was held inadmissible to prove that the risk was not to commence until the vessel reached an intermediate place.[2] So, where the instrument purported to be an absolute engagement to pay at a specified day, parol evidence of an oral agreement at the same time that the payment should be prolonged,[3] or depend upon a contingency,[4] or be made out of a particular fund, has been rejected.[5] Where a written agreement of partnership was unlimited as to the time of commencement, parol evidence, that it was at the same time verbally agreed that the partnership should not commence until a future day, was held inadmissible.[6] So, where, in assumpsit for use and occupation, upon a written memorandum of lease, at a certain rent, parol evidence was offered by the plaintiff of an agreement at the same time to pay a further sum, being the ground rent of the premises, to the ground landlord, it was rejected.[7] So,

[1] Weston *v.* Emes, 1 Taunt. 115.

[2] Kaines *v.* Knightly, Skin. 54; Leslie *v.* De la Torre, cited 12 East, 358.

[3] Hoare *v.* Graham, 3 Campb. 57; Hanson *v.* Stetson, 5 Pick. 506; Spring *v.* Lovett, 11 Pick. 417.

[4] Rawson *v.* Walker, 1 Stark. R. 361; Foster *v.* Jolly, 1 C. M. & R. 703; Hunt *v.* Adams, 7 Mass. 518; Free *v.* Hawkins, 8 Taunt. 92; Thompson *v.* Ketchum, 8 Johns. 189; Woodbridge *v.* Spooner, 3 B. & Ald. 233; Moseley *v.* Hanford, 10 B. & C. 729; Erwin *v.* Saunders, 1 Cowen, 249.

[5] Campbell *v.* Hodgson, 1 Gow, R. 74.

[6] Dix *v.* Otis, 5 Pick. 38.

[7] Preston *v.* Merceau, 2 W. Bl. 1249. A similar decision was made in The Isabella, 2 Rob. Adm. 241, and in White *v.* Wilson, 2 B. & P. 116, where seamen's wages were claimed in addition to the sum named in the shipping articles. The English statutes not only require such contracts to be in writing, but declare that the articles shall be conclusive upon the parties. The statute of the United States is equally imperative as to the writing, but omits the latter provision as to its conclusiveness. But the decisions, in both the cases just cited, rest upon the general rule stated in the text, which is a

where, in a written contract of sale of a ship, the ship was particularly described, it was held, that parol evidence of a further descriptive representation, made prior to the time of sale, was not admissible to charge the vendor, without proof of actual fraud; all previous conversation being merged in the written contract.[1] So, where a contract was for the sale and delivery of "Ware potatoes," of which, there were several kinds or qualities; parol evidence was held not admissible to show that the contract was in fact for the best of those kinds.[2] Where one signed a premium note in his own name, parol evidence was held inadmissible to show that he signed it as the agent of the defendant, on whose property he had caused insurance to be effected by the plaintiff, at the defendant's request, and who was sued as the promissor in the note, made by his agent.[3] Even the subsequent confession of the party, as to the true intent and construction of the title deed, under which he claims, will be rejected.[4] The books abound in

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doctrine of general jurisprudence, and not upon the mere positive enactments of the statutes. See 2 Rob. Adm. 243; Bogert *v.* Caunam, Anthon's R. 70. The same remark is true in regard to the Statute of Frauds. See 11 Mass. 31. See further, Rich *v.* Jackson, 4 Bro. Ch. R. 514; Brigham *v.* Rogers, 17 Mass. 571; Flinn *v.* Calow, 1 M. & G. 589.

[1] Pickering *v.* Dowson, 4 Taunt. 779. See also Powell *v.* Edmunds, 12 East, 6; Pender *v.* Fobes, 1 Dev. & Bat. 250; Wright *v.* Crookes, 1 Scott, N. R. 64.

[2] Smith *v.* Jeffreys, 15 M. & W. 561.

[3] Stackpole *v.* Arnold, 11 Mass. 27. See also Hunt *v.* Adams, 7 Mass. 518; Shankland *v.* City of Washington, 5 Peters, 394. But parol evidence is admissible to show that one of several promises signed as the surety of another. Carpenter *v.* King, 9 Metc. 511; McGee *v.* Prouty, Ib. 547. And where a special agreement was made in writing, for the sale of goods from A. to B., the latter being in part the agent of C., whose name did not appear in the transaction; it was held, that C. might maintain an action in his own name against A. for the breach of this contract, and that parol evidence was admissible to prove, that B. acted merely as the agent of C., and for his exclusive benefit. Hubbert *v.* Borden, 6 Wharton's R. 79.

[4] Paine *v.* McIntier, 1 Mass. 69, as explained in 10 Mass. 461. See also Townsend *v.* Weld, 8 Mass. 146.

cases of the application of this rule;[1] but these are deemed sufficient to illustrate its spirit and meaning, which is the extent of our present design.

§ 282. From the examples given in the two preceding sections, it is thus apparent that *the rule excludes only parol evidence of the language* of the parties, contradicting, varying, or adding to that which is contained in the written instrument; and this, because they have themselves committed to writing all which they deemed necessary to give full expression to their meaning, and because of the mischiefs which would result, if verbal testimony were in such cases received. But where the agreement in writing is expressed in short and incomplete terms, parol evidence is admissible to explain that which is *per se* unintelligible, such explanation not being inconsistent with the written terms.[2] It is also to be kept in mind, that though the first question in all cases of contract is one of interpretation and intention, yet the question, as we have already remarked, is not what the parties may have secretly and in fact intended, but what meaning did they intend to convey by the words they employed in the written instrument. To ascertain the meaning of these words, it is obvious that parol evidence of extraneous facts and circumstances may in some cases be admitted to a very great extent, without in any wise infringing the spirit of the rule under consideration. These cases, which in truth are not exceptions to the rule, but on the contrary are out of the range of its operation, we shall now proceed to consider.

§ 283. It is in the first place to be observed, that the rule does not restrict the Court to the perusal of a single instrument or paper; for, while the controversy is between the original parties, or their representatives, *all contemporaneous*

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[1] See Cowen & Hill's notes, 938–1003, to 1 Phil. Ev. 531–578; Tait on Evid. p. 326–336.

[2] Sweet *v.* Lee, 3 Man. & Gr. 452.

writings, relating to the same subject-matter, are admissible in evidence.[1]

§ 284. It is in the next place to be noted, that the rule is not infringed by the admission of parol evidence, showing that the instrument is altogether *void*, or that it *never* had any legal existence or binding force; either by reason of fraud, or for want of due execution and delivery, or for the illegality of the subject-matter. This qualification applies to all contracts, whether under seal or not. The *want of consideration* may also be proved, to show that the agreement is not binding; unless it is either under seal, which is conclusive evidence of a sufficient consideration,[2] or is a negotiable instrument in the hands of an innocent indorsee.[3] *Fraud*, practised by the party seeking the remedy, upon him against whom it is sought, and in that which is the subject-matter of the action or claim, is universally held fatal to his title. "The covin," says Lord Coke, "doth suffocate the right." The foundation of the claim, whether it be a record, or a deed, or a writing without seal, is of no importance, they being alike void, if obtained by fraud.[4] Parol evidence may also be offered to show that the contract was made for the furtherance of objects *forbidden by law*,[5] whether it be by

1 Leeds *v.* Lancashire, 2 Campb. 205; Hartley *v.* Wilkinson, 4 Campb. 127; Stone *v.* Metcalf, 1 Stark. R. 53; Bowerbank *v.* Monteiro, 4 Taunt. 846, per Gibbs, J.; Hunt *v.* Livermore, 5 Pick. 395; Davlin *v.* Hill, 2 Fairf. 434; Couch *v.* Meeker, 2 Conn. 302; Lee *v.* Dick, 10 Pet. 482; Bell *v.* Bruen, 17 Pet. 161; 1 Howard, S. C. R. 169, 183, S. C.

2 Ante, § 19, 22; Post, § 303.

3 Ante, § 189, 190.

4 2 Stark. Evid. 340; Tait on Evid. 327, 328; Chitty on Contr. 527, a.; Buckler *v.* Millerd, 2 Ventr. 107; Filmer *v.* Gott, 4 Bro. P. C. 230; Taylor *v.* Weld, 5 Mass. 116, per Sedgwick, J.; Franchot *v.* Leach, 5 Cowen, 508; Dorr *v.* Munsell, 13 Johns. 431; Morton *v.* Chandler, 8 Greenl. 9; Commonwealth *v.* Bullard, 9 Mass. 270; Scott *v.* Burton, 2 Ashm. 312.

5 Collins *v.* Blantern, 2 Wils. 347; 1 Smith's Leading Cas. 154, 168, note, and cases there cited. If the contract is by deed, the illegality must be specially pleaded. Whelpdale's case, 5 Co. 119; Mestayer *v.* Biggs,

statute, or by an express rule of the Common Law, or by the general policy of the law; or that the writing was obtained by *felony*,[1] or by *duress*;[2] or that the party was *incapable* of binding himself, either by reason of some legal impediment, such as infancy or coverture,[3] or from actual imbecility or want of reason,[4] whether it be by means of permanent idiocy or insanity, or from a temporary cause, such as drunkenness;[5] or that the instrument came into the hands of the plaintiff without any absolute and final *delivery*,[6] by the obligor or party charged.

§ 284 *a*. Nor does the rule apply, in cases where the original contract was verbal and entire, and a *part only* of it was *reduced to writing*. Thus, where, upon an adjustment of accounts, the debtor conveyed certain real estate to the creditor at an assumed value, which was greater than the amount due, and took the creditor's promissory note for the balance;

4 Tyrw. 471. But the rule in the text applies to such cases, as well as to those arising under the general issue. See also Biggs *v.* Lawrence, 3 T. R. 454; Waymell *v.* Read, 5 T. R. 600; Doe *v.* Ford, 3 Ad. & El. 649; Catlin *v.* Bell, 4 Campb. 183; Commonwealth *v.* Pease, 16 Mass. 91; Norman *v.* Cole, 3 Esp. 253; Sinclair *v.* Stevenson, 1 C. & P. 582; Chitty on Contr. 519–527.

1 2 B. & P. 471, per Heath, J.

2 2 Inst. 482, 483; 5 Com. Dig. Pleader 2, W. 18–23; Stouffer *v.* Latshaw, 2 Watts, 165; Thompson *v.* Lockwood, 15 Johns. 256; 2 Stark. Ev. 274.

3 2 Stark. Evid. 274; Anon. 12 Mod. 609; Van Valkenburg *v.* Rouk, 12 Johns. 338; 2 Inst. 482, 483; 5 Com. Dig. ub. sup.

4 2 Kent, Comm. 450–453, and cases there cited; Webster *v.* Woodford, 3 Day, 90; Mitchell *v.* Kingman, 5 Pick. 431; Rice *v.* Peet, 15 Johns. 503.

5 See Barrett *v.* Buxton, 2 Aik. 167, where this point is ably examined by Prentiss, J.; Seymour *v.* Delancey, 3 Cowen, 518; 1 Story's Eq. Jur. § 231, note (2); Wigglesworth *v.* Steers, 1 Hen. & Munf. 70; Prentice *v.* Achorn, 2 Paige, 31.

6 Clark *v.* Gifflord, 10 Wend. 310; United States *v.* Leffler, 11 Peters, 86; Jackson d. Titus *v.* Myers, 11 Wend. 533, 536; Cowen & Hill's note 969, to 1 Phil. Evid. 551; Couch *v.* Meeker, 2 Conn. R. 302.

it being verbally agreed that the real estate should be sold, and the proceeds accounted for by the grantee, and that the deficiency, if any, below the estimated value, should be made good by the grantor; which agreement the grantor afterwards acknowledged in writing; — it was held, in an action brought by the latter to recover the contents of the note, that the whole agreement was admissible in evidence on the part of the defendant; and that, upon proof that the sale of the land produced less than the estimated value, the deficiency should be deducted from the amount due upon the note.[1]

§ 285. Neither is this rule infringed by the introduction of parol evidence, *contradicting* or *explaining* the instrument in some of its *recitals of facts*, where such recitals do not, on other principles, estop the party to deny them; and accordingly in some cases such evidence is received.[2] Thus, in a settlement case, where the value of an estate, upon which the settlement was gained, was in question, evidence of a greater sum paid than was recited in the deed, was held admissible.[3] So, to show that the lands, described in the deed as in one parish, were in fact situated in another.[4] So, to show that at the time of entering into a contract of service in a particular employment, there was a further agreement to pay a sum of money as a premium for teaching the party the trade, whereby an apprenticeship was intended; and that the whole was therefore void for want of a stamp, and so no settlement was gained.[5] So, to contradict the recital of the date of a deed; as, for example, by proving that a charter-party, dated Feb. 6th, conditioned to sail on or before Feb. 12th, was not executed till after the latter day, and that therefore the condition was dispensed

[1] Lewis *v.* Gray, 1 Mass. 297; Lapham *v.* Whipple, 8 Metc. 59.

[2] 2 Poth. on Obl. by Evans, p. 181, 182.

[3] Rex *v.* Scammonden, 3 T. R. 474. See also Doe *v.* Ford, 3 Ad. & El. 649.

[4] Rex *v.* Wickham, 2 Ad. & El. 517.

[5] Rex *v.* Laindon, 8 T. R. 379.

with.[1] So, to show that the reference, in a codicil, to a will of 1833, was a mistake, that will being supposed to be destroyed; and that the will of 1837 was intended.[2] And on the other hand, where a written guaranty was expressed to be "in consideration of your *having discounted* V.'s note," and it was objected that it was for a past consideration, and therefore void, explanatory parol evidence was held admissible to show that the discount was contemporaneous with the guaranty.[3] So, where the guaranty was "in consideration of your having *this day* advanced to V. D.," similar evidence was held admissible.[4] It is also admissible to show when a written promise, without date, was in fact made.[5] Evidence may also be given of a consideration not mentioned in a deed, provided it be not inconsistent with the consideration expressed in it.[6]

§ 286. As it is a leading rule in regard to written instruments, that they are to be interpreted according to their subject-matter; it is obvious that parol or verbal testimony must be resorted to, in order to ascertain the *nature and qualities of the subject*,[7] to which the instrument refers. Evidence which is calculated to explain the subject of an instrument, is essentially different in its character from evidence of verbal communications respecting it. Whatever, therefore, indicates the

[1] Hall *v.* Cazenove, 4 East, 477. See further, Tait on Evid. p. 332, 333–336; Post, § 304.

[2] Quincey *v.* Quincey, 11 Jur. 111.

[3] Ex parte Flight, 35 Leg. Obs. 240. And see Haigh *v.* Brooks, 10 Ad. & El. 309; Butcher *v.* Stuart, 11 M. & W. 857.

[4] Goldshede *v.* Swan, 35 Leg. Obs. 203; 1 Exch. R. 154. This case has been the subject of some animated discussion in England. See 12 Jur. 22, 94, 102.

[5] Lobb *v.* Stanley, 5 Ad. & El. 574, N. S.

[6] Clifford *v.* Turrill, 9 Jur. 633.

[7] In the term "subject," in this connexion, text writers include every thing to which the instrument relates, as well as the person who is the other contracting party, or who is the object of the provision, whether it be by will or deed. Phil. & Am. on Evid. 732, n. (1).